

to ensure that agencies review all proposed contracts for equipment and services to comply with 5 U.S.C. 552a.

(6) Coordinate with Automatic Data Processing (ADP) and word processing managers providing services to ensure that an adequate risk analysis is conducted to comply with DoD 5400.11-R.

(7) Review all Directives that require forms or other methods used to collect information about individuals to ensure that they are in compliance with 5 U.S.C. 552a.

(8) Establish administrative systems in OSD Component organizations to comply with the procedures listed in this part and DoD 5400.11-R.

(9) Coordinate with the GC, DoD on all proposed denials of access to records.

(10) Provide justification to the DFOISR when access to a record is denied in whole or in part.

(11) Provide the record to the DFOISR when the initial denial of a request for access to such record has been appealed by the requester, or at the time of initial denial when appeal seems likely.

(12) Maintain an accurate account of the actions resulting in a denial for access to a record or for the correction of a record. This account should be maintained so that it can be readily certified as the complete record of proceedings if litigation occurs.

(13) Ensure that all personnel who either have access to the system of records, or who are engaged in developing or supervising procedures for handling records in the system, are aware of their responsibilities for protecting personal information as established in the Privacy Act and DoD 5400.11-R.

(14) Forward all requests for access to records received directly from an individual to the DFOISR for appropriate suspense control and recording.

(15) Provide DFOISR with a copy of the requested record when the request is granted.

(e) The requester who desires to submit a request is responsible for:

(1) Determining whether to submit the request in writing or in person. A requester who seeks access to records pertaining to himself or herself which

are filed by his or her name or personal identifier:

(i) May make such a request in person to the custodian of the records. If the requester is not satisfied with the response, however, in order to invoke any provision of 5 U.S.C. 552a, DoD 5400.11-R, or this part, the requester must file a request in writing as provided in §311.6(b)(10). The requester must provide proof of identity by showing drivers license or similar credentials.

(ii) Describing the record sought, and providing sufficient information to enable the material to be located (e.g., identification of system of records, approximate date it was initiated, originating organization, and type of document).

(iii) Complying with procedures provided in DoD 5400.11-R for inspecting and/or obtaining copies of requested records.

(iv) Submitting a written request to amend the record to the system manager or to the office designated in the system notice.

[64 FR 22785, Apr. 28, 1999, as amended at 66 FR 41780, Aug. 9, 2001]

§311.6 Procedures.

(a) *Publication of notice in the Federal Register.* (1) A notice shall be published in the FEDERAL REGISTER of any record system meeting the definition of a system of records in DoD 5400.11-R.

(2) Regarding new or revised records systems, each OSD Component shall provide the Chief, Directives and Records Division with 90 days advance notice of any anticipated new or revised system of records. This material shall be submitted to the OMB and to Congress at least 60 days before use and to the Federal Register at least 30 days before being put into use, to provide an opportunity for interested persons to submit written data, views, or arguments to the OSD Components. Instructions on content and preparation are outlined in DoD 5400.11-R.

(b) *Access to information on records systems.* (1) Upon request, and as provided by the Privacy Act, records shall be disclosed only to the individual they pertain to and under whose individual

name or identifier they are filed, unless exempted by provisions stated in DoD 5400.11–R.

(2) There is not requirement under 5 U.S.C. 552a that a record be created or that an individual be given access to records that are not in a group of records that meet this definition of a system of records in 5 U.S.C. 552a.

(3) Granting access to a record containing personal information shall not be conditioned upon any requirement that the individual state a reason or otherwise justify the need to gain access.

(4) No verification of identity shall be required of an individual seeking access to records that are otherwise available to the public.

(5) Individuals shall not be denied access to a record in a system of records about themselves because those records are exempted from disclosure under DoD 5400.7–R. Individuals may only be denied access to a record in a system of records about themselves when those records are exempted from the access provisions of the Privacy Act under DoD 5400.11–R, Chapter 5.

(6) Individuals shall not be denied access to their records for refusing to disclose their Social Security Numbers (SSNs), unless disclosure of the SSN is required by statute, by regulation adopted before January 1, 1975, or if the record's filing identifier and only means of retrieval is by SSN.

(7) Individuals may request access to their records, in person or by mail, in accordance with the procedures outlined in paragraph (b)(8) of this section.

(8) Information necessary to identify a record is: the individual's name, date of birth, place of birth, identification of the records system as listed in the FEDERAL REGISTER, or sufficient information to identify the type of records being sought, and the approximate date the records might have been created. Any individual making a request for access to records in person shall come to the Directorate for Freedom of Information and Security Review (DFOISR), Room 2C757, Pentagon, Washington, DC 20301–1155; and shall provide personal identification acceptable to the Director, DFOISR, to verify the individual's identity (e.g., driver's license, other licenses, permits, or

passes used for routine identification purposes).

(9) If an individual wishes to be accompanied by a third party when seeking access to records or wishes to have the record released directly to a third party, the individual may be required to furnish a signed access authorization granting the third party access.

(10) Any individual submitting a request by mail for access to information shall address such request to the Directorate for Freedom of Information and Security Review, Pentagon, Room 2C757, Washington, DC 20301–1155. To verify the identity of the individual, the request shall include either a signed notarized statement or an unsworn declaration in the format specified by 28 U.S.C. 1746.

(11) The following procedures shall apply to requests for access to records or information compiled for law enforcement purposes:

(i) Individuals requesting access to records or information about themselves and compiled for law enforcement purposes are processed under DoD 5400.11–R and DoD 5400.7–R to give them the greater degree of access.

(ii) Individual requests for access to records or information about themselves and compiled for law enforcement purposes (and in the custody of law enforcement activities) that have been incorporated into the records system, exempted from the access provisions of 5 U.S.C. 552a, will be processed in accordance with subsection C1.5.13 and Chapter 5, DoD 5400.7–R. Individuals shall not be denied access to records solely because they are in the exempt system, but they will have the same access that they would receive under DoD 5400.7–R. (Also see subsection A.10., Chapter 3, DoD 5400.11–R.)

(iii) Requests by the individuals for access to records or information about themselves and compiled for law enforcement purposes that are in records systems exempted from access provisions will be processed under subsection C.1., Chapter 5 of DoD 5400.11–R or DoD 5400.7–R, depending upon which regulation gives the greater degree of access. (See also subsection A. 10., Chapter 3, DoD 5400.1–R)

(iv) Individual requests for access to records or information about themselves and complied for law enforcement purposes exempted from access under Section B, Chapter 5 of DoD 54.11-R, that are temporarily in the hands of a non-law enforcement element for adjudicative or personnel actions, shall be referred to the originating agency. The requester will be informed in writing of these referrals.

(12) The following procedures shall apply to requests for illegible, incomplete, or partially exempt records:

(i) An individual shall not be denied access to a record or a copy of a record solely because the physical condition or format of the record does not make it readily available (e.g., deteriorated state or on magnetic tape). The document will be prepared as an extract, or it will be exactly recopied.

(ii) If a portion of the record contains information that is exempt from access, an extract or summary containing all of the information in the record that is releasable shall be prepared.

(iii) When the physical condition to the record makes it necessary to prepare an extract for release, the extract shall be prepared so that the requester will understand it.

(iv) The requester shall be informed of all deletions or changes to records.

(13) Medical records shall be disclosed to the individual they pertain to, unless a determination is made in consultation with a medical doctor, that the disclosure could have adverse effects on the individual's physical or mental health. Such information may be transmitted to a medical doctor named by the individual concerned. If the named medical doctor declines to provide the record to the individual, the OSD Components shall take positive action to ensure that the requested records are provided the individual.

(14) The individual may be charged reproduction fees for copies or records as outlined in DoD 5400.11-R.

(c) *Requested to amend personal information in records systems and disputes.*

(1) The Head of an OSD Component, or the designated official, shall allow individuals to request amendment to their records to the extent that such

records are not accurate, relevant, timely, or complete. Requests should be as brief and as simple as possible and should contain, as a minimum, identifying information to locate the record, as description of the items to be amended, and the reason for a change. A request shall not be rejected nor required to be resubmitted unless additional information is essential to process the request. Requesters shall be required to provide verification of their identity as stated in paragraph (b)(8) of this section, to ensure that they are seeking to amend records about themselves, and not, inadvertently or intentionally, the records of others.

(2) The appropriate system manager shall mail a written acknowledgement to an individual's request to amend a record within 10 days after receipt, excluding Saturdays, Sundays, and legal public holidays. Such acknowledgement shall identify the request and may, if necessary, request any additional information needed to make a determination. No acknowledgment is necessary if the request can be reviewed, processed, and if the individual can be notified of compliance or denial within the 10-day period. Whenever practical, the decision shall be made within 30 working days. For requests presented in person, written acknowledgment may be provided at the time the request is presented.

(3) The Head of an OSD Component, or designated official, shall promptly take one of the following actions on requests to amend the records:

(i) If the OSD Component official agrees with any portion or all of an individual's request, he or she will proceed to amend the records in accordance with existing statutes, regulations, or administrative procedures, and inform the requester of the action taken. The OSD Component official shall also notify all previous holders of the record that the amendment has been made, and shall explain the substance of the correction.

(ii) If the OSD Component official disagrees with all or any portion of a request, the individual shall be informed promptly of the refusal to amend a record, the reason for the refusal, and the procedure established by

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OSD for an appeal as outlined in paragraph (c)(6) of this section.

(iii) If the request for an amendment pertains to a record controlled and maintained by another Federal Agency, the request shall be referred to the appropriate Agency, and the requester advised of this:

(4) The following procedures shall be used when reviewing records under dispute:

(i) In response to a request for an amendment to records, officials shall determine whether the requester has adequately supported their claim that the record is inaccurate, irrelevant, untimely, or incomplete.

(ii) The Head of an OSD Component, or designated official, shall limit the review of a record of those items of information that clearly bear on any determination to amend the records and shall ensure that all those elements are present before determination is made.

(5) If the Head of an OSD Component, or designated official, after an initial review of a request to amend a record, disagrees with all or any portion of a record, he or she shall:

(i) Advise the individual of the denial and the reason for it.

(ii) Inform the individual that he or she may appeal the denial.

(iii) Describe the procedures for appealing the denial including the name and address of the official to whom the appeal should be directed. The procedures should be as brief and simple as possible.

(iv) Furnish a copy of the justification of any denial to amend a record to the DA&M, OSD.

(6) If an individual disagrees with the initial OSD determination, he or she may file an appeal. The request should be sent to the Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD), 1950 Defense Pentagon, Washington, D.C. 20301–1950, if the record is created and maintained by an OSD Component.

(7) If, after review, the DA&M, OSD further refuses to amend the record as requested, he shall advise the individual:

(i) Of the refusal and the reason and authority for the denial.

(ii) Of his or her right to file a statement of the reason for disagreeing with the DA&M's decision.

(iii) Of the procedures for filing a statement of disagreements.

(iv) That the statement filed shall be made available to anyone the record is disclosed to, together with a brief statement, at the discretion of the OSD Component, summarizing its reasons for refusing to amend the records.

(v) That prior recipients of copies of disputed records be provided by a copy of any statement of dispute to the extent that an accounting of disclosure is maintained.

(vi) Of his or her right to seek judicial review of the DA&M's refusal to amend a record.

(8) If, after the review, the DA&M, OSD, determines that the record should be amended in accordance with the individual's request, the OSD Component shall amend the record, advise the individual, and inform previous recipients where an accounting of disclosure has been maintained.

(9) All appeals should be processed within 30 days (excluding Saturdays, Sundays, and legal public holidays) after receipt by the proper office. If the DA&M determines that a fair and equitable review cannot be made within that time, the individual shall be informed in writing of the reasons for the delay and of the approximate date the review is expected to be completed.

(d) *Disclosure of disputed information.*

(1) If the DA&M, OSD, has refused to amend a record and the individual has filed a statement under paragraph (c)(7) of this section, the OSD Component shall clearly annotate the disputed record so that it is apparent to any person to whom the record is disclosed that a statement has been filed. Where feasible, the notation itself shall be integral to the record. Where an accounting of a disclosure has been made, the OSD Component shall advise previous recipients that the record has been disputed and shall provide a copy of the individual's statement.

(i) This statement shall be maintained to permit ready retrieval whenever the disputed portion of the record is to be disclosed.

(ii) When information that is the subject of a statement of dispute is subsequently disclosed, the OSD Component's designated official shall note which information is disputed and provide a copy of the individual's statement.

(2) The OSD Component shall include a brief summary of its reasons for not making a correction when disclosing disputed information. Such statement shall normally be limited to the reasons given to the individual for not amending the record.

(3) Copies of the OSD Component's summary will be treated as part of the individual's record; however, it will not be subject to the amendment procedure outlined in paragraph (c)(3)(iii) of this section.

(e) *Penalties*—(1) *Civil action*. (i) An individual may file a civil suit against the United States and may recover damages, for:

(A) Refusal to amend a record.

(B) Improper denial of the access to a record.

(C) Failure to maintain an accurate, relevant, timely, and complete record that is used to make determinations adverse to the individual.

(ii) An individual may also file a suit against the United States for failure to implement a provision of the Privacy Act when such failure leads to an adverse determination.

(iii) If the individual's suit is upheld, the court may direct the United States to pay the court costs and attorney's fees.

(2) *Criminal action*. (i) Criminal penalties may be imposed against an OSD officer or employee for certain offenses listed in section (i) of the Privacy Act, as follows: willful unauthorized disclosure of protected information in the records; failure to publish a notice of the existence of a record system in the FEDERAL REGISTER; requesting or gaining access to the individual's record under false pretenses.

(ii) An OSD officer or employee may be fine up to \$5,000 for a violation as outlined in paragraph (e)(2)(i) of this section.

(3) *Litigation status sheet*. Whenever a complaint citing 5 U.S.C. 552a is filed in a U.S. District Court against the Department of Defense, a DoD compo-

nent, or any DoD employee, the responsible system manager shall promptly notify the Defense Privacy Office. The litigation status sheet in DoD 5400.II-R provides a standard format for this notification. (The initial litigation status sheet shall, as a minimum, provide the information required by items 1. through 6.) A revised litigation status sheet shall be provided at each stage of the litigation. When a court renders a formal opinion or judgment, copies of the judgment or opinion shall be provided to the Defense Privacy Office with the litigation status sheet reporting that judgment or opinion.

(f) *Computer matching programs*. Paragraph B of Chapter 11 of DoD 5400.11-R prescribes that all requests for participation in a matching program (either as a matching agency or a source agency) be submitted to the Defense Privacy Office for review and compliance. OSD Components shall submit these request through the Directives and Records Division.

[64 FR 22785, Apr. 28, 1999; 64 FR 27694, May 21, 1999]

§311.7 Information requirements.

The Defense Privacy Office shall establish requirements and deadlines for DoD privacy reports. These reports shall be licensed in accordance with DoD Directive 8910.1.⁵

§311.8 Procedures for exemptions.

(a) *General information*. The Secretary of Defense designates those Office of the Secretary of Defense (OSD) systems of records which will be exempt from certain provisions of the Privacy Act. There are two types of exemptions, general and specific. The general exemption authorizes the exemption of a system of records from all but a few requirements of the Act. The specific exemption authorizes exemption of a system of records or portion thereof, from only a few specific requirements. If an OSD Component originates a new system of records for which it proposes an exemption, or if it proposes an additional or new exemption for an existing system of records, it shall submit the recommended exemption with the records system notice as outlined in

⁵ See footnote 2 to §311.1.